

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KIER KEAND'E GARDNER,

Plaintiff,

v.

WHATCOM COUNTY, et al.,

Defendants.

Case No. C19-1451-MJP-MLP

ORDER RE: PLAINTIFF'S MOTION  
FOR SUBPOENA DUCES TECUM

This is a 42 U.S.C. § 1983 prisoner civil rights action. Currently pending before the Court is Plaintiff's motion and declaration for issuance of subpoena duces tecum pursuant to Federal Rule of Civil Procedure 45 and for service by the United States Marshal ("Plaintiff's Motion"). (Dkt. # 32.)

Plaintiff requests that the Court issue an order directing the Clerk of Court to issue three blank subpoena duces tecum forms so that Plaintiff may direct them to the Bellingham Herald, the Washington State Department of Health, and to Defendants. (*Id.* at 4-6.) Through the subpoenas, Plaintiff specifically seeks: (1) an alleged newspaper article from the Bellingham Herald wherein Defendants Bill Elfo and Wendy Jones state that the Whatcom County Jail is "a condemned building, a fire and safety hazard, and not fit to house humans in"; (2) a

1 condemnation sticker that's allegedly been placed on the Whatcom County Jail by the  
2 Washington State Department of Health; (3) any papers concerning the condemnation of the  
3 Whatcom County Jail from those entities; and (4) an offender kite, previously written by  
4 Plaintiff, regarding his water being turned off in his cell. (*Id.* at 10.) Plaintiff additionally  
5 requests that the Court order the United States Marshal to serve the requested subpoenas and that  
6 an extension on the discovery deadline be granted to do so. (*Id.* at 1, n.1.) The discovery deadline  
7 in this matter concluded on March 10, 2020. (Dkt. # 21 at 1.)

8 Pursuant to Federal Rule of Civil Procedure 45(a)(1)(D), a subpoena may direct a  
9 non-party to an action to produce documents for inspection. However, a party's reliance on a  
10 subpoena duces tecum is limited by the relevance standards set forth in Federal Rule of Civil  
11 Procedure 26(b)(1) and by the court's duty under Federal Rule of Civil Procedure 45(d)(1) to  
12 ensure that a subpoena does not impose "undue burden or expense on a person subject to the  
13 subpoena." A motion for issuance of a subpoena duces tecum should be supported by clear  
14 identification of the documents sought and a showing that the records are obtainable only  
15 through the identified third-party. *See, e.g., Davis v. Ramen*, 2010 WL 1948560, at \*1 (E.D. Cal.  
16 May 11, 2010). Federal Rule of Civil Procedure 45(a)(3) requires that "[t]he clerk must issue a  
17 subpoena, signed but otherwise in blank, to a party who requests it.

18 A plaintiff proceeding *in forma pauperis* is generally entitled to obtain service of a  
19 subpoena duces tecum by the United States Marshal. 28 U.S.C. § 1915(d). Because Federal Rule  
20 of Civil Procedure 45(b) requires personal service of a subpoena, "[d]irecting the Marshal's  
21 Office to expend its resources personally serving a subpoena is not taken lightly by the court."  
22 *Austin v. Winett*, 2008 WL 5213414, at \*1 (E.D. Cal. Dec. 12, 2008); *see* 28 U.S.C. § 1915(d).  
23 Accordingly, the issuance of a subpoena pursuant to 28 U.S.C. § 1915(d) "is subject to

1 limitations.” *Casterlow-Bey v. Trafford Publ’g. Co.*, 2017 WL 11358483, at \*2 (W.D. Wash.  
2 Oct. 30, 2017) (quoting *Heilman v. Lyons*, 2010 WL 5168871, at \*1 (E.D. Cal. Dec. 13, 2010)).

3 Here, as leave of court is not required for plaintiff to obtain a subpoena pursuant to  
4 Federal Rule of Civil Procedure 45(a)(3), that portion of plaintiff’s motion is stricken as  
5 unnecessary. The clerk will issue the requested subpoenas, though the subpoenas will be issued  
6 in blank and it will be plaintiff’s responsibility to complete the subpoenas.<sup>1</sup> While a litigant may  
7 obtain a subpoena without first making a showing of necessity or relevance, here Plaintiff  
8 additionally asks the Court to incur the expense of serving the subpoenas. Therefore, it is  
9 appropriate for the Court to evaluate the need for the information Plaintiff seeks to obtain by way  
10 of the subpoenas. *See* Fed. R. Civ. P. 26; Fed. R. Civ. P. 45.

11 The Court notes that Defendants were recently granted an extension to the dispositive  
12 motions deadline by this Court’s Order to May 8, 2020 and that a dispositive motion is likely  
13 forthcoming. (*See* Dkt. # 28; Dkt. # 31 at 2.) The information sought by Plaintiff through the  
14 requested subpoenas is likely relevant to the issues to be raised by Defendants in a pending  
15 dispositive motion because Plaintiff’s requests tie directly to his claim regarding the alleged  
16 condemnation of the Whatcom County Jail. However, the discovery deadline on this matter  
17 concluded on March 10, 2020, and no extension was sought by Plaintiff prior to its expiration.  
18 (*See* Dkt. # 21 at 1.) Accordingly, the Court declines to order the United States Marshal to serve  
19 plaintiff’s subpoenas.

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<sup>1</sup> Plaintiff requested three blank subpoena forms in his Motion, but only identified two non-parties to the  
22 action for his requests: (1) the Bellingham Herald; and (2) the Washington State Department of Health.  
23 Plaintiff’s third request pertains specifically to an offender kite Plaintiff submitted to Defendants while  
incarcerated at the Whatcom County Jail. Rule 45 is not the proper discovery tool to obtain information  
from a party. Plaintiff should have requested the offender kite as one of his discovery requests propounded  
to Defendants.

1 The Court, having reviewed Plaintiff's Motion, and the balance of the record, hereby  
2 ORDERS:

3 (1) Plaintiff's motion for issuance of subpoena duces tecum (dkt. # 32) is STRICKEN  
4 and Plaintiff's motion for an order directing service of the requested subpoena (dkt. # 32) is  
5 DENIED.

6 (2) Plaintiff's request for an extension of the discovery deadline (dkt. #32) is  
7 DENIED.

8 (3) The Clerk is directed to issue three subpoenas, in blank, and send them to plaintiff  
9 at his address of record. The Clerk is directed to send copies of this order to the parties and to the  
10 Honorable Marsha J. Pechman.

11 Dated this 8th day of May, 2020.

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13 MICHELLE L. PETERSON  
14 United States Magistrate Judge  
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